



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 8, 2020

By ECF

The Honorable Richard J. Sullivan
United States Circuit Judge
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *United States v. Javier Lavayen*, S1 14 Cr. 774 (RJS)

Dear Judge Sullivan:

The Government respectfully submits this letter on behalf of both parties and the Probation Department to provide an update with respect to the defendant's violation of supervised release proceeding and in advance of the plea proceeding scheduled for December 16, 2020 at 2:00 p.m.

As noted previously, the defendant pleaded guilty in an underlying Queens County case to a violation of New York Penal Law (NYPL) section 140.35, possession of burglar's tools, a class A misdemeanor, and received a sentence of 6 months' imprisonment. In addition, two orders of protection were issued on behalf of the complainants. Additionally, the defendant has previously admitted before Your Honor specifications #5 (heroin use) and #6 (failing to truthfully answer questions from Probation) of the August 10, 2020 amended violations of supervised release report.

The parties have conferred regarding the supervised release specifications remaining and contemplate the following disposition: the defendant would admit specifications #3 and #4 (possession of burglar's tools). With leave of the Court, the Probation Department would prepare an amended violation report that includes a new specification, namely that the defendant committed the New York State crime of robbery in the second degree (including, relevant here, that he conspired or attempted to commit that crime), aided by another person actually present, in violation of NYPL section 160.10(1), and the defendant would admit to this specification. In the parties' view, this offense best captures Mr. Lavayen's provable conduct. The Government

would intend to move at sentencing to dismiss the two outstanding specifications (specification #1, robbery in the first degree, and specification #2, burglary in the third degree).

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney


By: /s/ Drew Skinner
Drew Skinner
Assistant United States Attorney
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cc: U.S. Probation Officer Darryl Spencer
Martin Cohen, Esq.

IT IS HEREBY ORDERED THAT the Probation Department shall prepare an amended violation report by December 14, 2020.

SO ORDERED.

Dated: December 8, 2020
New York, New York


RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation